

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

PHILIPS NORTH AMERICA LLC, a
Delaware Company, and KONINKLIJKE
PHILIPS N.V., a Company of the
Netherlands,

Plaintiffs,

VS.

SUMMIT IMAGING INC., a Washington Corporation; LAWRENCE R. NGUYEN, an individual; and DOES 1-10, inclusive,

Defendants.

NO. 2:19-cv-01745

COMPLAINT FOR:

- (1) CIRCUMVENTING A TECHNOLOGICAL MEASURE – 17 U.S.C. § 1201;**
- (2) MODIFYING COPYRIGHT MANAGEMENT INFORMATION – 17 U.S.C. § 1202;**
- (3) TRADE SECRET MISAPPROPRIATION AND VIOLATIONS OF THE DEFEND TRADE SECRETS ACT – 18 U.S.C. § 1836**
- (4) TRADE SECRET MISAPPROPRIATION AND VIOLATIONS OF WASHINGTON’S UNIFORM TRADE SECRET ACT – RCW 19.108, *ET. SEQ***
- (5) FALSE ADVERTISING – 15 U.S.C. § 1125(a);**
- (6) UNFAIR COMPETITION – RCW 19.86.020**

JURY DEMAND

1 Plaintiffs Philips North America LLC (“Philips USA”) and Koninklijke Philips N.V.
 2 (“Philips N.V.”) (hereinafter, collectively the “Plaintiff” or “Philips”), allege as follows against
 3 Defendants Summit Imaging Inc. and Mr. Larry R. Nguyen (“Nguyen”), CEO and sole
 4 Governor of Summit, (“Summit” and collectively with Nguyen, “Defendants”):

5 1. Philips is a well-known leader in the business of developing, manufacturing,
 6 selling, supporting, maintaining, and servicing medical imaging systems used at hospitals and
 7 medical centers. Philips’ medical imaging systems include Philips’ proprietary hardware and
 8 software, which include Philips trade secrets, which are necessary to operate, service, and
 9 repair Philips’ systems. Philips’ proprietary software enables certain functions on Philips
 10 medical imaging systems, which can only be modified by Philips, and the software enables
 11 Philips to control, update, and track the use of its ultrasound system software in the
 12 marketplace. Philips’ customers pay for enabled features and additional options. These
 13 features and options enable software functionality and selectively enable interoperability with a
 14 variety of related Philips hardware devices.

15 2. Philips’ high quality products and proprietary software have made Philips a
 16 trusted producer, manufacturer, and supplier of medical imaging systems worldwide, and in the
 17 course of Philips’ business, Philips has garnered substantial goodwill and has advertised and
 18 marketed worldwide the Philips’ goods and services under the Philips trademarks.

19 3. Philips’ access controls protect Philips copyright-protected software as part of
 20 Philips automated system of managing the terms and conditions upon which Philips software
 21 may be accessed.

22 4. In a fraudulent and intentional scheme, Summit illegally and without Philips’
 23 consent hacks into Philips’ proprietary software to modify, tamper with and alter Philips’
 24 ultrasound systems to unlawfully enable software features in order to access options and add-on
 25 features which they are not licensed to use and have not paid for. Summit accomplishes this
 26 illegal scheme by circumventing Philips access controls. Summit engages in such conduct in
 27 order to promote and support its repair parts business and its service contract business.

1 5. Summit is not authorized to tamper with the proprietary software to enable
2 features without Philips' permission. Summit's hacking and tampering modifies Philips'
3 copyright-protected software to create ultrasound systems in configurations Philips has never
4 sold or supported. These modifications give Summit and its customers unlawful access to
5 Philips proprietary software, trade secrets, and enables Summit and/or its customers to force
6 compatibility and interoperability between Philips medical imaging devices and related
7 hardware devices.

8 6. Upon information and belief, Summit has created a software program called
9 Adepto, which is a software tool specifically designed to hack into Philips medical imaging
10 devices by circumventing Philips' access controls. The Adepto hacking tool allows Summit
11 and its customers to gain unauthorized access to the proprietary software within Philips medical
12 imaging systems.

13 7. In furtherance of its scheme, Summit provides training services to its
14 customers that include specific instructions about how to circumvent Philips' access controls.

15 8. Although Summit is surreptitiously using Adepto to hack into Philips'
16 proprietary software, to circumvent Philips' access controls and to modify Philips proprietary
17 software without Philips' consent, it falsely markets and advertises to the public that its Adepto
18 hacking tool is "the legal solution for customers aware of the issues around licensing,
19 copyright, an intellectual property" and the "only legal alternative to OEM" services.

20 9. Philips brings this action against Summit to put a stop to Summit's illegal
21 scheme. In addition to recovering damages caused by Summit's unlawful scheme, Philips seeks
22 a permanent injunction prohibiting Summit from using Philips' proprietary material; from
23 misappropriating Philips' intellectual property; from hacking Philips software; and an order
24 requiring an accounting and return of all Philips' proprietary material unlawfully in Summit's
25 possession, shared by Summit, or obtained by Summit through Summit's unlawful acts,
26 including an identification of all persons or entities such information has been obtained from or
27 shared with.

THE PARTIES

10. Plaintiff Philips North America LLC (“Philips USA”) is a Delaware limited liability company, formerly known and doing business as Philips North America Corporation (a Delaware Corporation), with a principal place of business in Andover, Massachusetts. Philips USA’s business includes, among other things, developing, manufacturing, selling, supporting, maintaining, and servicing Philips’ medical imaging systems.

11. Plaintiff Koninklijke Philips N.V. (“Philips NV”) is a public limited liability company organized and existing under the laws of the Netherlands, with a principal place of business at High Tech Campus 5, Eindhoven Netherlands 5656 AE. Philips NV is the sole owner of numerous Philips’ subsidiaries, including Plaintiff Philips North America LLC.

12. Based upon publicly available information obtained from the State of Washington Secretary of State and belief, Defendant Summit Imaging Inc. is a corporation organized and existing under the laws of the State of Washington, with its principle place of business at 15000 Woodinville Redmond Rd. NE Ste. B800, Woodinville, WA, 98072-4502.

13. Based upon information and belief, Defendant Larry K. Nguyen is an individual residing in Woodinville, WA, Snohomish County. Nguyen is a principal owner, Governor, Chief Executive Officer, and Chief Technology Officer of Summit.

14. The true names or capacities, whether individual, corporate, associate, or otherwise, of Does 1-10 inclusive, and each of them are unknown to Philips at this time. Philips therefore sues Does 1-10 by such fictitious names. Philips will amend the Complaint to reflect the true names and capacities of said Does 1-10 when that information has been ascertained. Philips alleges upon information and belief that each of Does 1-10 is an agent, co-conspirator, employee and/or partner of Summit and/or Nguyen, and each was involved in and caused the wrongdoing alleged herein, and is jointly and severally liable for all of the conduct alleged herein.

JURISDICTION AND VENUE

15. This action is for circumventing a technological measure that effectively

1 controls access to a protected work arising under the Digital Millennium Copyright Act
2 (“DMCA”) 17 U.S.C. §§ 1201, 1202 *et seq.*, for trade secret misappropriation under 18 U.S.C.
3 § 1836, for violations of Washington Trade Secrets Act, RCW 19.108, *et seq.*, and for false
4 advertising under the Lanham Act, 15 U.S.C. § 1051 *et seq.*, and for unfair methods of
5 competition and/or unfair or deceptive acts or practices in the conduct of trade or commerce,
6 RCW 19.86.020.

7 16. This Court has subject matter jurisdiction over this action pursuant to
8 28 U.S.C. §§ 1331 and 1338(a), 17 U.S.C. § 100 *et. seq.*, and 28 U.S.C. §1369 (supplemental
9 jurisdiction) and the doctrines of ancillary and pendant jurisdiction.

10 17. This Court has personal jurisdiction over Summit, because Summit has their
11 principal place of business located in this district, and because Nguyen himself resides within
12 this district. Moreover, Summit has transacted business in this district and committed
13 infringement and tortious acts within the State of Washington by offering and advertising
14 products and/or services knowing that such marketing is false, likely to deceive a large portion
15 of the relevant public and causes harm to Philips in this district. Upon information and belief,
16 Summit’s sales representatives target and/or solicit business from Washington residents. Upon
17 information and belief, Summit’s business in this district includes tampering with Philips’
18 proprietary software and physically tampering with Philip’s ultrasound systems, disassembling
19 of Philips’ medical device systems physically and by circumvention of technological measures
20 that control access to Philips’ protected works and by use of misappropriated trade secrets
21 belonging to Plaintiff.

22 18. Venue is proper within the Western District of Washington pursuant to
23 28 U.S.C. § 1391(b)(1) and (2), because Defendants reside in this district and the asserted
24 claims arise from Defendants’ conduct within this district, including the solicitation of business
25 and the deceptive promotion of its products and/or services while making unauthorized and
26 infringing use of Philips’ copyrights and trade secrets.

BACKGROUND AND FACTS RELATED TO THIS ACTION

~Background Related to Philips~

19. Philips is well-known in the healthcare industry as a trusted provider of electronic medical imaging devices for use in healthcare facilities by healthcare providers.

20. Philips is among the premier medical imaging device companies in the United States and supplies healthcare providers throughout the United States with medical devices. Philips provides a variety of high quality products that include, but are not limited to, imaging devices such as ultrasound systems, computed tomography (CT) scanners, positron emission tomography (PET) scanners, X-ray machines, magnetic resonance (MR) scanners, and nuclear medicine scanners.

21. Philips develops, manufactures, sells, and subsequently supports, maintains, repairs and services these medical imaging systems through proprietary hardware, software, and trade secrets contained within the proprietary software and hardware.

22. In addition to the specific products and services that Philips offers, the Philips name has also become commonly known as the provider of specific branded lines of medical imaging devices, including high-end and premium ultrasound imaging devices under the “CX,” “HD,” “ClearVue,” “Sparq,” “VISIQ,” “Xperius,” “Affiniti,” and EPIQ brand names (collectively, Philips’ “Ultrasound Systems”). In addition to these Ultrasound Systems, Philips manufactures and sells related hardware devices including various models of ultrasound transducers.

23. Philips ultrasound transducers come in a wide variety of forms, each specific to a particular Ultrasound System, to a particular market segment, and to particular clinical segments.

24. In addition to Philips' Ultrasound Systems, Philips is also commonly known as a provider of specific branded lines of x-ray machines known as the "Integris," "FD Xpers," "Selaron," "Allura," and "FD Allura" models; of CT and/or PET scanners known as the "Brilliance," "Ingenuity," "IQon," "iCT," "Big Bore," and "MX16" models; of a series of

1 magnetic resonance (MR) scanners known as the “Ingenia” models; and of a series of nuclear
 2 medicine and/or other scanners known as the “BrightView” models.

3 **~Philips Owns Software Copyrights And Has Implemented Strict Access Controls In**
 4 **The Ultrasound Systems~**

5 25. Philips’ Ultrasound Systems are complex pieces of medical equipment that
 6 rely heavily on proprietary software and trade secrets that accompany each system. That
 7 software was developed by and is owned by Philips.

8 26. The specific versions and functionalities of the Ultrasound Systems enabled
 9 on a particular machine can vary, and Philips licenses the use of features on each specific
 10 machine. Because the proprietary software enabled on the Ultrasound Systems allows them to
 11 function, the proprietary software includes strict access controls to limit access to software
 12 features. These access controls also control access to optional software, which can enable
 13 additional system features and which Philips licenses to end users for a fee.

14 27. Philips has sold and sells Ultrasound Systems driven by one of two software
 15 platforms: (1) Philips Voyager Platform and (2) Philips Common Platform software. Each of
 16 these platforms was created by, and is owned by, Philips and includes Philips’ confidential and
 17 proprietary information, intellectual property, and trade secrets.

18 28. Each Ultrasound System, whether driven by Voyager Platform software or
 19 Common Platform software, includes both model specific features and machine specific set
 20 features that Philips enables on each Ultrasound System pursuant to the license that the end
 21 user purchases. An Ultrasound System may also support optional hardware add-ons and
 22 features, like ultrasound transducers, which Philips can enable if the end user purchases an
 23 additional license.

24 29. Philips uses multiple layers of technological controls to protect Philips’
 25 copyright-protected works from unauthorized access. These controls include user specific
 26 access codes and hardware keys, which enable the software access and control features for a
 27 particular registered user. These user specific access controls permit access to enabled Philips

1 tools and features based on a user's registered access authorization level. These controls also
2 include machine specific access controls which only permit user access to the features and tools
3 that have been enabled on a specific machine. Philips further protects its trade secrets and
4 proprietary software with both contractual restrictions and access controls which only allow
5 individuals access to software and informational material consistent with the authorization level
6 of their user credentials.

7 30. Each specific Ultrasound System includes certain software and hardware
8 features that may only be used when a particular licensable feature is enabled for the specific
9 Ultrasound System. For each Philips' Ultrasound System sold by Philips, only the licensed
10 features and tools purchased for that specific system are enabled, and only the specific
11 authorized users of the machine can access the enabled features and software options.

12 31. Philips' optional licensable features control access to Philips' proprietary
13 software and limit the options available on each specific Ultrasound System. Features and add-
14 ons that have not been licensed are not accessible on the Ultrasound System or by the
15 authorized user. Any attempt to use an unlicensed feature on an Ultrasound System will result
16 in an error message that the feature is not compatible with the system and/or the machine
17 specific access controls will prevent access to the unlicensed feature. If a specific hardware
18 add-on requires a software feature be enabled to make use of such hardware, absent the
19 required software, Philips Ultrasound Systems will report an incompatible device and the
20 related software will be disabled.

21 32. For example, if a user attaches an ultrasound transducer to a Philips
22 Ultrasound System, but the related software is not enabled for that Ultrasound System, the
23 imaging functionality will be disabled and the user will receive an error message informing the
24 user that the transducer is incompatible with that specific Ultrasound System.

25 33. The systems also contain other software features, including trade secret
26 features, which can only be accessed by individuals with the necessary authorization levels.
27 These features include certain onboard service, calibration, and diagnostic features and tools.

1 34. Philips has spent considerable time and money creating this software and
 2 developing access controls to limit and control access to these features in the manners
 3 described above. Philips controls who holds a license for specific restricted tools and features,
 4 and requires end users to register for authorized access.

5 35. Unauthorized access to or changes to a Philips Ultrasound Machine or its
 6 software puts Philips' proprietary software and trade secret information at serious risk, and
 7 harms Philips' ability to control access to its proprietary software, and use of its Ultrasound
 8 Systems.

9 **~Summit Is Modifying Philips' Ultrasound Systems as a Regular Course of its Business~**

10 36. Upon information and belief, by, through, and at the direction of its CEO and
 11 CTO Nguyen, Summit operates its unlawful scheme from its headquarters in Woodinville,
 12 Washington.

13 37. Summit sells customers service contracts, which include the repair and
 14 service of customers' Philips Ultrasound Systems. Philips has not provided authorized access
 15 credentials to Summit that would enable Summit to access Philips Ultrasound System software
 16 in excess of standard clinical user level access. However, Summit falsely markets and
 17 advertises that it can repair and service Philips' Ultrasound Systems in ways that fall well
 18 outside the bounds of standard clinical user level access.

19 38. Because Summit is not authorized to access Philips' Ultrasound System
 20 software at a sufficient level to perform the services it markets and sells, Summit uses a
 21 hacking tool called Adepto to illegally access Philips' proprietary software by bypassing
 22 Philips' access controls. Adepto allows Summit to gain unauthorized access to Philips'
 23 copyright-protected software tools and Philips' copyright-protected log files. Upon
 24 information and belief, Summit hacks into Philips' proprietary services in additional ways as
 25 well.

26 39. Summit's CEO and CTO Nguyen designed and/or developed and/or directed
 27 the development of the Adepto hacking tool personally. Upon information and belief, in order

1 to make use of the Adepto hacking tool Summit and Summit customers physically remove the
 2 hard drive from the Ultrasound System; the removed hard drive is then attached to a separate
 3 computer where the Adepto hacking tool runs; the Adepto hacking tool bypasses Philips
 4 software access controls and accesses the removed hard. Upon information and belief, the
 5 Adepto hacking tool makes and/or installs copies of Philips software that contain enabled
 6 unlicensed options within Philips software. These enabled unlicensed options force
 7 compatibility that would not otherwise be accessible on the removed hard drive and the
 8 Ultrasound System from which it was removed. For example, the Adepto tool enables options
 9 on the removed hard drive in order to access and operate software to enable use of a Philips
 10 transducer that, but for the unauthorized modifications Summit makes using the Adepto tool,
 11 would not be accessible on that specific Ultrasound System.

12 40. Upon information and belief, Summit also makes use of its Adepto hacking
 13 tool and/or other hacking tools in order to enable unlicensed optional Philips software on
 14 Philips' Ultrasound Systems used by Summit in its part repair and parts refurbishing business.

15 41. Summit is not authorized to distribute modified Philips Ultrasound Systems,
 16 and Summit does not and never has held a license to make modifications to Philips Ultrasound
 17 Systems or the software that drives them.

18 42. Summit is not only making unauthorized changes to the Ultrasound Systems,
 19 Summit is knowingly and intentionally selling services that it advertises are legal, but in fact
 20 rely on Summit's unlawful hacking techniques and hacking tools. Upon information and
 21 belief, when a customer purchases services from Summit, Summit provides copies of and
 22 training on the use of its Adepto hacking tool. Summit's services thereafter then rely on
 23 Summit's ability, or Summit's customers' ability, to use the Adepto tool to repeatedly hack into
 24 and circumvent Philips' access controls in order to gain unlicensed access to Philips' copyright-
 25 protected material, including service and diagnostic tool and log files.

26 43. In short, Summit is making a profit at the expense of Philips by offering
 27 consumers the ability to make unlicensed use of Philips software, by hacking Philips software

1 to enable unlicensed features that consumers would otherwise have to purchase separately from
 2 Philips, and/or with configurations that consumers could never obtain from Philips. Summit
 3 then sells these services in direct competition with Philips, at a discount, and is therefore
 4 making these unauthorized changes for commercial gain.

5 ~ **Summit Marketing Falsely Advertises That Their Unlawful Practices are Legal ~**

6 44. Upon information and belief, consumers who purchase Summit's unlawful
 7 services believe that Summit's services are lawful, because Summit expressly represents that
 8 they are the "only legal alternative to OEM" and that its hacking tool is a legal solution to
 9 access OEM systems, like Philips' Ultrasound Systems, that are protected by copyright.

10 45. OEM systems are original equipment manufacturer systems, and providers of
 11 those systems – like Philips – are OEMs.

12 46. Summit falsely advertises to the public that Summit's hacking is a legal
 13 solution to the "Current issue in the market" that OEM systems are protected by copyright.



14 15 **Current issues in the market**

- 16 • Sophisticated Operating Systems
- 17 • Limited or no access to OEM service tools
- 18 • Legal precedence set for pass-codes
 - 19 • Copyright, Intellectual Property, Licensing
- 20 • Lack of information/service manuals
- 21 • Quality of product
- 22 • On-time delivery
- 23 • Responsive Technical Support
- 24 • ISOs predominantly focused on field service

25 47. Summit's online webinar discussing its Adepto hacking tool confirms that
 26 Summit understands that Philips software is protected by copyright. Summit's instructor
 27 explains that Summit developed its hacking tool Adepto, because "legal precedent has been set

1 for these passcodes that lock down those service tools with copyright, intellectual and licensing
 2 issues that surround them.” Thus, Summit’s own training material shows that Summit is aware
 3 that Philips’ software is protected by both access controls and by copyright law.

4 48. Thus, Summit frames its scheme as addressing the “issue[] in the market” that
 5 OEM service providers – like Philips – actively protect their copyright-protected tools and
 6 software with access controls. And Summit’s answer to this “issue[] in the market” is its
 7 Adepto hacking tool, which circumvents Philips access controls in order to gain unlawful
 8 access to and make unlawful copies of Philips’ proprietary software.

9 49. In the marketing and training materials Summit uses to advertise their service
 10 contracts and repair/refurbishment businesses, Summit unabashedly states that Summit created
 11 Adepto to give customers the tools to service their medical imaging devices, as an “Alternative
 12 to OEM diagnostics.” Summit further describes this tool as the “legal solution for customers
 13 aware of issues around licensing, copyright and intellectual property,” explaining that “it’s
 14 ethical, it removes any liabilities that can be passed on by an independent service provider or
 15 ... passing on service code liability.”

16 Why we created Adepto™



25 50. Summit informs its customers that the machine owner (*i.e.* the healthcare
 26 provider) will be primarily liable for the behavior of outsourced service providers.
 27

1 Specifically, Nguyen tells its customers that they, as owners of Philips medical imaging
 2 systems, will be primarily liable, and that the only legal alternative to relying on an OEM
 3 manufacturer is to make use of Summit's Adepto tool.

4 **Why this matters to
 5 healthcare facilities**

6 **All parties are liable**

- 7 • Owner of the equipment is assuming unnecessary risk
- 8 • Use of illegally obtained passcodes are tracked and traceable to specific dates and times
- 9 • Trackable to who serviced the equipment at that time

10 **How to know service methods are legal**

- 11 • Ask for OEM license agreement
- 12 • Installation procedures that don't infringe on copyright, IP or licensing



14 51. Summit further informs its customers that the tools used by independent
 15 service organizations (ISOs) to access diagnostic service tools, necessary to install drivers or
 16 flash particular boards, are often passcodes that "infring[e] upon copyright, licensing, and
 17 intellectual property" which is "all owned by the OEMs that built the software," and "the
 18 healthcare facility is liable," because OEM, like Philips, track use of their software through
 19 device service menus. Summit explains that healthcare providers, as the equipment owners,
 20 will be identified and liable when OEMs detect unlawful use of their software.

21 52. Summit, and specifically Summit's CEO personally, then further markets
 22 their Adepto hacking tool as a tool that allows Summit to lawfully provide services as an ISO
 23 without infringing Philips' (an OEM) copyright.

24 53. Summit's marketing, however, is false. Summit's statements that its services
 25 and the Adepto tool are legal cannot be squared with their admission that the Philips' software
 26 within Philips medical image devices is proprietary and copyright-protected, and that the
 27 Adepto hacking tool hacks into Philips' proprietary and copyright-protected software to

1 circumvent access controls and access Philips' copyright-protected files, to physically alter
2 Philips medical imaging devices, and to modify access controls within Philips devices.

3 54. Specifically, Adepto hacks into Philips Ultrasound Systems by circumventing
4 Philips' access controls, entirely bypassing Philips' Ultrasound user interface, and thereby
5 obtains direct access to Philips' copyright-protected software files in a manner that eludes
6 detection and leaves no traces within Philips system logs.

7 55. Upon information and belief, in order to convince the public that Adepto is
8 legal, Summit markets Adepto as a tool that accesses only the Windows OS and not the
9 Ultrasound Systems software installed on the same hard drive. This is false. Adepto operates
10 directly on a hard drive that Summit physically removes from Philips Ultrasound Systems.

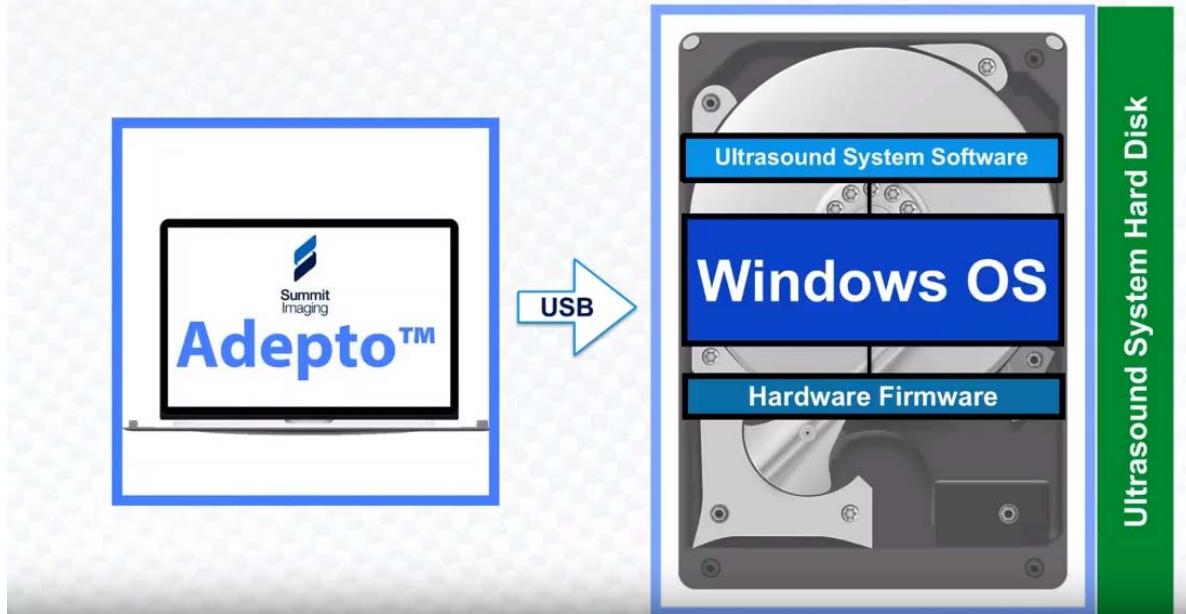
11 56. In Summit's advertising video, CEO Nguyen falsely advertises that Adepto
12 "works within the Windows OS and this [the Philips Ultrasound System hard drive] is simply a
13 slaved hard drive", and that Summit is merely a "Windows developer developing software that
14 runs on the Windows' operating system", and is therefore only operating within the Windows
15 OS on these hard drives. But, as with any software that executes on a Windows OS, Philips'
16 copyright-protected files and software containing Philips trade secrets are stored within the
17 Windows OS file structure. Adepto is configured to unlawfully circumvent Philips access
18 controls that protect and control access to both the Windows OS within the Philips Ultrasound
19 System and the Philips Ultrasound Software in order modify Philips' software within that file
20 structure.

21 //

22 //

23 //

1 How Adepto™ Works



12 57. In Summit's marketing video, in reference to the figure above, Nguyen
 13 explains that copyright, IP, and licensing issues only affect the "light blue box" above (*i.e.* the
 14 "Ultrasound System Software"), and Adepto does not touch the light blue box. But this is a
 15 distinction without a difference because Philips' copyright-protected files and the software
 16 containing Philips' trade secrets are stored within the Windows OS file structure. Adepto is
 17 specifically configured to modify Philips' software within that file structure. Furthermore,
 18 access to the Windows OS on Philips Ultrasound Systems is also controlled by Philips access
 19 controls, which Adepto circumvents in order to gain access to both the Windows OS and
 20 Philips software within a Philips Ultrasound System hard drive.

21 58. Summit's video goes on to explain what Adepto is used for and how it is used
 22 through a demonstration that involves circumventing Philips access controls to gain access to
 23 and make copies of Philips' copyright-protected files.

24 59. Summit, and specifically Summit's CEO Nguyen personally, explains that it
 25 makes its Adepto hacking tool available free to its customers that return on a repeat basis.

26 60. Upon information and belief, if an individual requests a copy of Summit and
 27 Nguyen's Adepto hacking tool, such an individual is directed to Nguyen who personally

1 interviews persons who request a copy of the Adepto hacking tool, and upon information and
 2 belief Nguyen personally controls and oversees distribution of the Adepto hacking tool to
 3 Summit's customers.

4 **~ Summit's Parts Repair and Refurbishment Business Relies on Hacking Philips Access
 5 Controls to Gain Access to and Make Use of Philips Proprietary Software ~**

6 61. Upon information and belief, Summit hacks Philips medical imaging devices
 7 in order to enable unlicensed system options within Philips medical imaging devices.

8 62. For example, Summit operates a business selling ultrasound system parts,
 9 including parts for Philips Ultrasound Systems. This business includes a business of repairing
 10 ultrasound transducers. In order to complete a repair, Summit tests a repaired transducer by
 11 using a Philips Ultrasound System to verify the repaired part.

12 63. Philips sells a variety of Ultrasound System transducers, each designed for a
 13 particular purpose, and many require specifically licensed software to work on the Philips
 14 Ultrasound System to which a transducer is attached. Thus, many Philips Ultrasound Systems
 15 are unable to make use of a variety of Philips transducers, because corresponding optional
 16 software is not enabled on the particular Ultrasound System being used. If such software is not
 17 enabled, the system's imaging software will be unavailable and the system will report that the
 18 transducer is incompatible.

19 64. Rather than purchase licenses for the optional software from Philips, Summit
 20 uses the hacking techniques described above, including Adepto, to enable unlicensed optional
 21 software within Philips Ultrasound Systems to test and verify parts repaired or refurbished by
 22 Summit.

23 65. Thus, to conduct its business, which necessarily requires that Summit
 24 illegally enable unlicensed options on an Ultrasound System, Summit circumvents multiple
 25 layers of Philips' access controls.

26 66. Upon information and belief, when Summit cannot test a particular transducer
 27 (because it does not have sufficiently enabled options to do so), Summit hacks through multiple

layers of Philips' access controls to modify Philips' software files and to enable unlicensed options required to test that transducer.

67. Upon information and belief, Summit is in possession of Philips internal tools for enabling options within Philips medical imaging devices, including at least Philips Ultrasound Systems. Such tools are proprietary to Philips, contain Philips trade secrets, have never been distributed outside of Philips, and contain highly confidential trade secrets.

68. Upon information and belief, Summit circumvents Philips' access controls, to gain access to Philips' medical imaging system onboard tools for updating, modifying, or adding Philips software options—tools that only Philips authorized personnel are able to access using either Philips generated key codes or Philips authorized access control dongles in order to comply with Philips access controls.

69. Thus, in order to enable unlicensed options to support Summit’s repair parts business, Summit hacks Philips access controls to gain access to Philips onboard tools or software functionality that modifies or enables options, and then Summit employs Philips’ internal trade secret and proprietary software, or other hacking tools, to modify machine specific configuration files within Philips’ systems that enable unlicensed options and allow unlicensed access to aspects of Philips software. Once a system has been hacked and modified by Summit, Philips’ software corresponding to the respective option is permanently accessible by Summit, or its customers, and any other user of that machine.

FIRST CAUSE OF ACTION

Circumventing a Technological Measure – 17 U.S.C. § 1201

(All Plaintiffs Against All Defendants)

70. Philips restates and re-alleges all of the allegations of all the paragraphs in this complaint as though fully set forth herein this First Cause of Action.

71. Philips medical imaging systems include Philips' copyrighted and proprietary software, which also include Philips' trade secrets.

72. The clinical software and diagnostic and service tools software in Philips'

1 Ultrasound Systems are protected by copyright under Title 17, and include without limitation
2 Philips service tools for updating or modifying the licensed options available on a machine, and
3 for modifying identification numbers associated with a machine.

4 73. The log file output and user displays of Philips Ultrasound Systems are also
5 respectively protected by copyright under Title 17 as non-literal elements of Philips software
6 installed on and executing on Philips Ultrasound Systems.

7 74. Philips Ultrasound System licensed optional software is also protected by
8 copyright under Title 17.

9 75. Philips employs numerous access controls in order to protect and control
10 access to and restrict use of its copyrighted proprietary software and/or portions thereof.

11 76. Philips' access controls include technological measures to protect and control
12 access to and limit use of their copyrighted proprietary software and/or portions thereof.

13 77. Summit knowingly and intentionally circumvents Philips' access controls,
14 using either Summit's Adepto hacking tool, or other unlawful means, or other unlawfully
15 obtained means, or a combination of the Adepto hacking tool with such other means. Summit
16 hacks Philips' access controls in order to gain access to Philips' medical imaging system
17 onboard tools for updating, modifying, or adding Philips software options—tools that only
18 Philips authorized personnel are able to access using either Philips generated key codes or
19 Philips authorized access control dongles in order to comply with Philips access controls.

20 78. Summit has hacked and continues to intentionally hack one or more of
21 Philips' technological measures to knowingly and intentionally circumvent these access
22 controls to gain unauthorized access to Philips' protected software works, which include
23 Philips trade secrets, and to enable features of these software works which Philips has not
24 licensed or authorized Summit, or its customers, to make use of. Through these unlawful
25 means, Summit unlawfully gains access to unlicensed Philips software and provides
26 unauthorized access to all subsequent users of Philips' machines hacked by Summit.

27 79. Summit, furthermore, has hacked and continues to knowingly and

1 intentionally hack one or more of Philips' technological measures to circumvent these access
 2 controls to gain unauthorized access to a variety of copyrighted works. Summit does this to
 3 circumvent Philips controls that limit access to Philips' copyright-protected software works in
 4 order to enable optional features of these software works which Philips has not licensed or
 5 authorized Summit, or its customers, to make use of. Philips has the right to employ
 6 technological measures to protect, and control access to, Philips copyright-protected works
 7 within Philips Ultrasound Systems, the operating system within which Philips copyright-
 8 protected works are executed, and the files stored within the operating systems' file structure.

9 80. Upon information and belief, Summit knowingly and intentionally employs
 10 these hacked machines providing unlicensed access to Philips copyright-protected software and
 11 files to Summit's employees in order to provide a parts repair business, and Summit hacks the
 12 Philips machines of Summit's customers in furtherance of both its parts repair business and its
 13 service contract business.

14 81. Summit further provides training to Summit's customers that include
 15 instructions about how to circumvent Philips' access controls with Summit's hacking tools and
 16 techniques.

17 82. Summit's intentional and knowing circumvention of the technological
 18 measures Philips uses to effectively control access to a work or works protected under Title 17,
 19 in violation of 17 U.S.C. § 1201(a)(1) of the Digital Millennium Copyright Act.

20 83. Summit's techniques, including its Adepto hacking tool, are, or at least
 21 include, devices, products, components, or parts thereof that are primarily designed or produced
 22 for the purpose of circumventing Philips' access controls that protect Philips software to
 23 provide Summit and Summit's customers constant access to Philips' proprietary software.
 24 Thus, Summit is in the business of knowingly marketing, manufacturing, offering to the public,
 25 and/or trafficking in a product, device, component, or part thereof, that is primarily designed or
 26 produced for the purpose of circumventing Philips' access controls that protect and control
 27 access to Philips software.

1 84. Upon information and belief, in order to carry out Summit's unlawful
 2 circumvention of Philips' access controls, Summit makes use of tools which have no use but to
 3 circumvent access controls.

4 85. Summit has intentionally and/or knowingly manufactured, offered to the
 5 public, or otherwise trafficked in technologies, products, services, devices, components, or
 6 parts thereof, that are primarily designed or produced for the purpose of circumventing
 7 protection afforded by Philips' access controls and/or which have limited commercially
 8 significant purpose other than to circumvent Philips' access controls in violation of the DMCA,
 9 17 U.S.C. § 1201(a)(2). Upon information and belief obtained from publicly available sources,
 10 Nguyen is a principal owner, Governor, Chief Executive Officer (CEO), and Chief Technology
 11 Officer (CTO) of Summit.

12 86. In his role, Nguyen oversees and has the right and ability to supervise
 13 Summit's actions addressed in this complaint, including Summit's use of the Adepto hacking
 14 tool, and upon information and belief one or more other hacking tools, in order to circumvent
 15 Philips access controls that are technological measures that effectively control access to works
 16 protected under Title 17, including Philips proprietary software and logs on at least Philips
 17 medical imaging systems, including Philips Ultrasound Systems.

18 87. Nguyen publicly, personally, promotes use of Summit's hacking tools in
 19 Summit's marketing material.

20 88. Nguyen personally controls and oversees the process of selecting to whom
 21 Summit employees distribute the Adepto hacking tool.

22 89. Upon information and belief, Nguyen personally advertises its Adepto
 23 hacking tool as available for distribution to Summit's customers, but Summit only distributes
 24 its Adepto hacking tool to contracted customers after such customers have been personally
 25 interviewed by Nguyen himself.

26 90. Upon information and belief obtained from publicly available sources,
 27 Nguyen designed and created Summit's Adepto hacking tool and participated in or directed its

1 development.

2 91. As a principal owner, Governor, CEO and CTO, Nguyen has, has had, and
 3 continues to have an obvious and direct financial interest in Summit's circumvention
 4 technology.

5 92. Nguyen has, has had, and continues to have the right and ability to supervise
 6 the work of Summit's employees.

7 93. Because Nguyen had the right and ability to supervise the circumvention
 8 actions of Summit, and because Nguyen benefitted financially from Summit's circumvention
 9 actions, Nguyen is vicariously liable for Summit's violations of 17 U.S.C. §§ 1201 and 1202 as
 10 set forth in this Complaint.

11 94. In addition, or in the alternative, as an officer of Summit who personally
 12 participated in the Summit's tortious activities, Nguyen is liable for Summit's torts.

13 95. Specifically, as both the CEO and CTO, Nguyen oversaw and directly
 14 participated in Summit's acts of circumvention of access controls to gain access to copyrighted
 15 material that includes Philips' trade secrets.

16 96. Nguyen was aware of, participated in the use of, created and/or directly
 17 developed, Summit's Adepto hacking tool, and oversees, directs, participates, promotes, and
 18 participates in the use and distribution of Summit's Adepto hacking tool in order to allow
 19 Summit to circumvent Philips' technological measures protecting Philips copyright and thereby
 20 enable unlicensed software within Philips Ultrasound Systems and access and create copies of
 21 Philips copyright-protected log files, and in order to allow Summit's customers to do the same.

22 97. Nguyen has also personally trained Summit's employees and Summit's
 23 customers in how to make use of the Adepto hacking tool in order to disable or otherwise
 24 circumvent Philips access controls and create copies of Philips copyrighted software and log
 25 files.

26 98. Philips has been and will continue to be damaged by the conduct of Summit
 27 and Nguyen conduct in an amount not presently known with certainty, but that will be proven

1 at trial.

2 99. Philips is entitled to the range of relief provided by 17 U.S.C. § 1203,
 3 including but not limited to, injunctive relief, compensatory damages or statutory damages, and
 4 Philips' costs and attorneys' fees in amounts to be proven at trial. Defendants' conduct has also
 5 caused irreparable and incalculable harm and injuries to Philips, and, unless enjoined, will
 6 cause further irreparable and incalculable injury, for which Philips has no adequate remedy at
 7 law.

8 **SECOND CAUSE OF ACTION**

9 **Modifying Copyright Management Information – 17 U.S.C. § 1202**

10 **(All Plaintiffs Against All Defendants)**

11 100. Philips restates and re-alleges all of the allegations of all the paragraphs in
 12 this complaint as though fully set forth herein this Second Cause of Action.

13 101. Philips proprietary software is protected by copyright laws, and Philips owns
 14 the copyright in its protected software.

15 102. Philips proprietary software includes access controls that are accessed and
 16 read by Philips' automated copyright license management software within Philips Ultrasound
 17 Systems, which is a standard component of Philips' proprietary software included in each
 18 Philips Ultrasound System.

19 103. Philips authorizes specific machines to execute only specific licensed
 20 optional software, and the specific software is only available on that specific machine
 21 consistent with the hardware and software features the customer purchases for that specific
 22 machine.

23 104. When a Philips Ultrasound System boots up, a Philips access control allows
 24 the system to load only the licensed optional software based on machine specific configurations
 25 accessed by Philips access controls. This automated system allows Philips to exclude
 26 unlicensed use of optional software and thus automatically enforces the terms and conditions
 27 under which Philips makes its software available on a Philips Ultrasound System.

1 105. Philips' machine specific configuration files for controlling access only to
 2 licensed optional software include copyright management information under 17 U.S.C.
 3 1202(c), including the terms and conditions of the use of the software residing thereon in
 4 machine readable configuration files.

5 106. Summit's business of modifying Philips Ultrasound Systems includes
 6 modifications to such copyright management information and is intended to allow users to
 7 make unauthorized access to unlicensed portions of Philips protected software.

8 107. Upon information and belief, Summit's customers are unaware that Summit
 9 has modified Philips' copyright management information, because Summit intentionally
 10 conceals this behavior from its customers.

11 108. Upon information and belief, Summit's servicing of Ultrasound Systems
 12 includes providing or distributing modified machine specific configuration files.

13 109. Summit's business of modified copyright management information is done
 14 intentionally and for the purpose of distributing falsified copyright management information
 15 knowing that the copyright management information has been altered. And Summit knows,
 16 has reasonable grounds to know, or intends that its behavior facilitates, enables, or induces
 17 Summit's customers to infringe Philips rights under Title 17.

18 110. Philips has not authorized Summit to modify or provide such falsified
 19 copyright management information, nor has Philips authorized the modification of any
 20 copyright management information or the unlicensed use of Philips' proprietary optional
 21 software.

22 111. Summit knowingly and with the intent to induce, enable, facilitate, or conceal
 23 infringement by its customers provides, and has provided, falsified copyright management
 24 information and/or distributing falsified copyright management information in violation of 17
 25 U.S.C. § 1202(a).

26 112. Summit's intentional alteration of Philips' copyright management
 27 information and subsequent distribution of modified configuration files for accessing

1 unlicensed portions of Philips' proprietary software is done with the knowledge that such
2 behavior induces, enables, facilitates, or conceals infringement of Philips' copyright in its
3 proprietary software in violation of 17 U.S.C. § 1202(b).

4 113. Upon information and belief obtained from publicly available sources,
5 Nguyen is a principal owner, Governor, Chief Executive Officer (CEO), and Chief Technology
6 Officer (CTO) of Summit.

7 114. In his role, Nguyen oversees and has the right and ability to supervise,
8 Summit's actions addressed in this complaint, including Summit's use of the Adepto hacking
9 tool, and upon information and belief one or more other hacking tools, in order to circumvent
10 Philips access controls that are technological measures that effectively control access to works
11 protected under Title 17, including Philips proprietary software and logs on at least Philips
12 medical imaging systems, including Philips Ultrasound Systems.

13 115. Nguyen publicly, personally, promotes use of Summit's hacking tools in
14 Summit's marketing material.

15 116. Nguyen personally controls and oversees the process of selecting to whom
16 Summit employees distribute the Adepto hacking tool.

17 117. Upon information and belief, Nguyen personally advertises its Adepto
18 hacking tool as available for distribution to Summit's customers, but Summit only distributes
19 its Adepto hacking tool to contracted customers after such customers have been personally
20 interviewed by Nguyen himself.

21 118. Upon information and belief obtained from publicly available sources,
22 Nguyen designed and created Summit's Adepto hacking tool and participated in or directed its
23 development.

24 119. As a principal owner, Governor, CEO and CTO, Nguyen has, has had, and
25 continues to have an obvious and direct financial interest in Summit's circumvention
26 technology.

27 120. Nguyen has, has had, and continues to have the right and ability to supervise

1 the work of Summit's employees.

2 121. Because Nguyen had the right and ability to supervise the circumvention
 3 actions of Summit, and because Nguyen benefitted financially from Summit's circumvention
 4 actions, Nguyen is vicariously liable for Summit's violations of 17 U.S.C. §§ 1201 and 1202 as
 5 set forth in this Complaint.

6 122. In addition, or in the alternative, as an officer of Summit, Nguyen is liable for
 7 Summit's torts.

8 123. Specifically, as both the CEO and CTO, Nguyen oversaw and directly
 9 participated in Summit's acts of circumvention of access controls to gain access to copyrighted
 10 material that includes Philips' trade secrets.

11 124. Nguyen was aware of, participated in the use of, created and/or directly
 12 developed, Summit's Adepto hacking tool, and oversees, directs, participates, promotes, and
 13 participates in the use and distribution of Summit's Adepto hacking tool in order to allow
 14 Summit to circumvent Philips' technological measures protecting Philips copyright and thereby
 15 enable unlicensed software within Philips Ultrasound Systems and access and create copies of
 16 Philips copyright-protected log files, and in order to allow Summit's customers to do the same.

17 125. Nguyen has also personally trained Summit's employees and Summit's
 18 customers in how to make use of the Adepto hacking tool in order to disable or otherwise
 19 circumvent Philips access controls and create copies of Philips copyrighted software and log
 20 files.

21 126. Philips has been and will continue to be damaged by the conduct of Summit
 22 and Nguyen conduct in an amount not presently known with certainty, but that will be proven
 23 at trial.

24 127. Philips is entitled to the range of relief provided by 17 U.S.C. 1203, including
 25 but not limited to, injunctive relief, compensatory damages or statutory damages, and Philips'
 26 costs and attorneys' fees in amounts to be proven at trial. Summit's conduct has also caused
 27 irreparable and incalculable harm and injuries to Philips, and, unless enjoined, will cause

1 further irreparable and incalculable injury, for which Philips has no adequate remedy at law.

2 **THIRD CAUSE OF ACTION**

3 **Trade Secret Misappropriation – 18 U.S.C. § 1836**

4 **(All Plaintiffs Against All Defendants)**

5 128. Philips restates and re-alleges all of the allegations of all the paragraphs in
6 this complaint as though fully set forth herein this Third Cause of Action.

7 129. Philips owns and possesses certain confidential, proprietary, and trade secret
8 information, including scientific, technical, and engineering information and financial,
9 business, and economic information, as alleged above and below, in Philips' proprietary
10 software for the Philips Ultrasound Systems.

11 130. Philips' confidential, proprietary, and trade secret information relates to
12 products used in, or intended for use in, interstate or foreign commerce.

13 131. Philips' proprietary software and access control systems, including onboard
14 software, contain and are trade secrets because Philips restricts access to them and Philips has
15 engaged in reasonable measures to maintain their secrecy. Such reasonable measures to protect
16 its trade secrets include, for example, implementing systems of access registration, access
17 credential management, access control measures, machine specific access control files, and
18 other safeguards associated with Philips' proprietary software, including in the form of physical
19 and/or technological safeguards and also including in the form of contractual protections and
20 written notices and warnings.

21 132. Philips has expended significant money and effort in developing Philips'
22 proprietary software, the trade secrets embodied therein, and the access control systems that
23 protect such software and trade secrets, and that software and the information therein would be
24 difficult to properly acquire or duplicate by Summit or other competitors of Philips.

25 133. Philips' proprietary software and access control systems derive independent
26 economic value to Philips by not being generally known, and not being readily ascertainable
27 through proper means, by another person who could obtain economic value from the disclosure

1 or use of the information. Moreover, they are of significant commercial value to Philips,
 2 because among other things, Philips relies upon these trade secrets to achieve an advantage in
 3 the marketplace with respect to the quality, range, and efficiency of the repair and maintenance
 4 services that it is able to offer by virtue of the pricing related thereto.

5 134. Upon information and belief, Summit has obtained Philips internal trade
 6 secret software tools for enabling optional software on Philips Ultrasound systems; these tools
 7 are restricted within Philips even as to Philips own engineers and developers, and have never
 8 been distributed outside of Philips.

9 135. Upon information and belief, Summit possesses and is making use of Philips'
 10 trade secret tools for managing its access controls and Summit obtained these tools for enabling
 11 software options by improper means, or from someone having an obligation to maintain the
 12 secrecy of these tools in violation of the obligation.

13 136. Philips optionally enabled software which implements and enables licensable
 14 features and tools comprises Philips trade secrets, which Philips only authorizes execution of
 15 within specific licensed machines. These trade secrets reside on Philips Ultrasound Systems in
 16 compiled machine readable encoding, in a form which protects the nature and character and
 17 specific details of Philips trade secrets. These trade secrets are only accessible by a machine
 18 having an appropriate licensed option enabled by Philips' access controls. During execution a
 19 user or observer is unable to observe the nature, character, or details of the trade secrets
 20 embodied in the software that enables the machines functionality.

21 137. Summit unlawfully accesses and enables access to Philips' trade secrets for
 22 the purpose of furthering its parts repair business or its repair and maintenance service business
 23 in all cases for a profit.

24 138. Summit has misappropriated some or all of these trade secrets for its own
 25 unlawful use and/or benefit without express or implied consent by Philips. At the time of its
 26 use of such trade secrets, Summit knew or had reason to know that its knowledge of the trade
 27 secrets was acquired either under circumstances giving rise to a duty to maintain the secrecy of

1 the trade secrets or limit their use, or from or through a person who owed a duty to Philips to
 2 maintain the secrecy of the trade secret or limit the use of the trade secret, or by improper
 3 means.

4 139. Summit's actions have been knowing, deliberate, willful, reckless, and in
 5 utter disregard of Philips' rights.

6 140. As a result of Summit's misappropriation of these trade secrets, Philips has
 7 suffered actual damages in an amount to be proven at trial. At a minimum, Summit has gained
 8 an improper competitive advantage over Philips that caused or may cause Philips to be
 9 underbid or to otherwise lose out on business that it would have otherwise obtained.

10 141. Summit's ongoing and continuing use of the trade secrets and proprietary and
 11 confidential information of Philips has caused, and will cause, Philips repeated and irreparable
 12 injury. Philips' remedy at law is not, by itself, adequate to compensate for the injuries already
 13 inflicted and further threatened by Summit.

14 142. Upon information and belief, Nguyen personally oversees and approves the
 15 use of Philips trade secrets. Specifically, Nguyen designed and created Summit's Adepto tool
 16 for the purpose of circumventing access controls, and Nguyen has instructed his company,
 17 Summit, to make use of Summit's Adepto hacking tool in connection with Philips trade secrets
 18 in order to modify Philips systems' access controls to enable Philips' licensable features. Thus,
 19 under Nguyen's direction Summit and Summit's customers thereby gain access and making use
 20 of Philips trade secrets via improper means of hacking Philips' access controls. And Nguyen is
 21 personally involved in making false statements in Summit's marketing of the Adepto hacking
 22 tool as a tool for misappropriating Philips trade secrets.

23 143. Thus, Nguyen is personally and individually liable for the activities of
 24 Summit and Summit's employees which he personally formulates, ratifies, directs, controls,
 25 and participates in.

26 144. Philips has been damaged by all of the foregoing and is entitled to an award
 27 of exemplary damages and attorneys' fees.

145. By engaging in the conduct set forth in the preceding paragraphs of this Complaint, Summit has violated the Defend Trade Secrets Act (DTSA), 18 U.S.C. § 1836.

FOURTH CAUSE OF ACTION

Trade Secret Misappropriation – RCW 19.108, et. seq.

(All Plaintiffs Against All Defendants)

146. Philips restates and re-alleges all of the allegations of all the paragraphs in this complaint as though fully set forth herein this Fourth Cause of Action.

147. Philips owns and possesses certain confidential, proprietary, and trade secret information, including scientific, technical, and engineering information and financial, business, and economic information, as alleged above and below, in Philips' proprietary software for the Philips Ultrasound Systems.

148. Philips' confidential, proprietary, and trade secret information relates to products used in, or intended for use, in interstate or foreign commerce.

149. Philips' proprietary software and access control systems, including its diagnostic and service software, contain and are trade secrets because Philips restricts access to them and Philips has engaged in reasonable measures to maintain their secrecy. Such reasonable measures to protect its trade secrets include, for example, implementing systems of access registration, access credential management, access control measures, temporal limitations on distributed electronic material and access credentials, and other safeguards associated with Philips' proprietary software, including in the form of physical and/or technological safeguards and also including in the form of contractual protections and written notices and warnings.

150. Philips has expended significant money and effort in developing Philips' proprietary software, the trade secrets embodied therein, and the access control systems that protect such software and trade secrets, and that software and the information therein would be difficult to properly acquire or duplicate by Summit or other competitors of Philips.

151. Philips' proprietary software and access control systems derive independent

1 economic value to Philips by not being generally known, and not being readily ascertainable
 2 through proper means, by another person who could obtain economic value from the disclosure
 3 or use of the information. Moreover, they are of significant commercial value to Philips,
 4 because among other things, Philips relies upon these trade secrets to achieve an advantage in
 5 the marketplace with respect to the quality, range, and efficiency of the repair and maintenance
 6 services that it is able to offer by virtue of the pricing related thereto.

7 152. Upon information and belief, Summit has obtained Philips internal trade
 8 secret software tools for enabling optional software on Philips Ultrasound systems; these tools
 9 are restricted within Philips even as to Philips own engineers and developers, and have never
 10 been distributed outside of Philips.

11 153. Upon information and belief, Summit possesses and is making use of Philips'
 12 trade secret tools for managing its access controls and Summit obtained these tools for enabling
 13 software options by improper means, or from someone having an obligation to maintain the
 14 secrecy of these tools in violation of the obligation.

15 154. Philips optionally enabled software which implements and enables licensable
 16 features and tools comprises Philips trade secrets, which Philips only authorizes execution of
 17 within specific licensed machines. These trade secrets reside on Philips Ultrasound Systems in
 18 compiled machine readable encoding, in a form which protects the nature and character and
 19 specific details of Philips trade secrets. These trade secrets are only accessible by a machine
 20 having an appropriate licensed option enabled by Philips' access controls. During execution a
 21 user or observer is unable to observe the nature, character, or details of the trade secrets
 22 embodied in the software that enables the machines functionality.

23 155. Summit unlawfully accesses and enables access to Philips' trade secrets for
 24 the purpose of furthering its parts repair business or its repair and maintenance service business
 25 in all cases for a profit.

26 156. Summit has misappropriated some or all of these trade secrets for its own
 27 unlawful use and/or benefit without express or implied consent by Philips. At the time of its

1 use of such trade secrets, Summit knew or had reason to know that its knowledge of the trade
 2 secrets was acquired either under circumstances giving rise to a duty to maintain the secrecy of
 3 the trade secrets or limit their use, or from or through a person who owed a duty to Philips to
 4 maintain the secrecy of the trade secret or limit the use of the trade secret, or by improper
 5 means.

6 157. Summit's actions have been knowing, deliberate, willful, reckless, and in
 7 utter disregard of Philips' rights. Summit's misappropriation of Philips' trade secrets by
 8 hacking into Philips' restricted systems and Philips' medical imaging systems demonstrates
 9 Summit's behavior is willful and rises to the level of maliciousness appropriate for exemplary
 10 and punitive damages.

11 158. As a result of Summit's misappropriation of these trade secrets, Philips has
 12 suffered actual damages in an amount to be proven at trial. At a minimum, Summit has gained
 13 an improper competitive advantage over Philips that caused or may cause Philips to be
 14 underbid or to otherwise lose out on business that it would have otherwise obtained.

15 159. Summit's ongoing and continuing use of the trade secrets and proprietary and
 16 confidential information of Philips has caused, and will cause, Philips repeated and irreparable
 17 injury. Philips' remedy at law is not, by itself, adequate to compensate for the injuries already
 18 inflicted and further threatened by Summit.

19 160. Upon information and belief, Nguyen personally oversees and approves the
 20 use of Philips trade secrets. Specifically, Nguyen designed and created Summit's Adepto tool
 21 for the purpose of circumventing access controls, and Nguyen has instructed his company,
 22 Summit, to make use of Summit's Adepto hacking tool in connection with Philips trade secrets
 23 in order to modify Philips systems' access controls to enable Philips' licensable features. Thus,
 24 under Nguyen's direction Summit and Summit's customers thereby gain access and making use
 25 of Philips trade secrets via improper means of hacking Philips' access controls. And Nguyen is
 26 personally involved in making false statements in Summit's marketing of the Adepto hacking
 27 tool as a tool for misappropriating Philips trade secrets.

161. Thus, Nguyen is personally and individually liable for the activities of Summit and Summit's employees which he personally formulates, ratifies, directs, controls, and participates in.

162. Philips has been damaged by all of the foregoing and Summit's and Nguyen's willful and wanton conduct demonstrate that Philips is entitled to an award of exemplary damages and attorneys' fees.

163. By engaging in the conduct set forth in the preceding paragraphs of this Complaint, Summit has unlawfully misappropriated Philips' trade secrets and violated Washington's Uniform Trade Secret Act, RCW 19.108, *et. seq.*

FIFTH CAUSE OF ACTION

False Advertising – 15 U.S.C. § 1125(a)

(All Plaintiffs Against All Defendants)

164. Philips restates and re-alleges all of the allegations of all the paragraphs in this complaint as though fully set forth herein this Fifth Cause of Action.

165. As set forth above, Summit makes false and misleading statements regarding the quality and nature of Summit's business and services. Specifically, Summit advertises that its services, relying upon its Adepto hacking tool, are a legal alternative Philips OEM services that address the market issue that Philips protects its proprietary software and trade secrets with access controls. Summit warns healthcare providers that other independent service organization rely on falsely generated keys or codes to perform services by infringing OEM rights in OEM service tools. Summit further markets that it is able to modify Philips Ultrasound System software without accessing or touching Philips Ultrasound Software, and that Summit's Adepto hacking tool only accesses Windows portions of a Philips Ultrasound Software system. Summit explains that this method of circumventing Philips access controls is legal, and avoids liability to healthcare providers arising from unlawful services.

166. Summit's marketing is false and misleading, because it is untrue; Summit's techniques are unlawful as described throughout this complaint. Specifically, Summit's

1 techniques violate the DMCA's prohibition on circumventing access controls that effectively
 2 control access to a protected work, because Philips access controls effectively control access to
 3 Philips proprietary optional software, to access to Philips software for enabling Philips optional
 4 software, and access to Microsoft's Windows operating systems within Philips' Ultrasound
 5 Systems.

6 167. Defendants' false and misleading representations of fact in its commercial
 7 advertising misrepresent the nature, characteristics, qualities, and origin of Summit's services,
 8 and falsely represent that Summit's services are a legal mechanism for circumventing Philips
 9 access controls within its medical imaging devices, including Ultrasound Systems.

10 168. Such conduct by Summit constitutes false advertising in violation of Section
 11 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

12 169. Defendants' knowledge that their Adepto hacking tool and reliance on Philips
 13 tools for enabling Philips software options all work to circumvent access controls meant to
 14 protect Philips copyright-protected works and Philips trade secrets evidences an intent to cause
 15 consumer confusion and to defraud the public, and renders this case exceptional under 15
 16 U.S.C. § 1117.

17 170. Upon information and belief, Nguyen personally oversees and approves the
 18 use of Summit's false advertising. Specifically, Nguyen has been personally involved in
 19 making false statements on behalf of Summit in Summit's marketing of the Adepto hacking
 20 tool to Summit's customers as the only legal alternative to relying on Philips, as OEM, for
 21 support of Summit's customers' systems.

22 171. Thus, Nguyen is personally and individually liable for the false advertising
 23 activities of Summit and Summit's employees which he personally formulates, ratifies, directs,
 24 controls, and participates in.

25 172. As a direct and proximate result of Defendants' false advertising in violation
 26 of under 15 U.S.C. § 1125(a), Plaintiffs have suffered, and will continue to suffer, substantial
 27 damage and irreparable harm constituting injury for which they have no adequate remedy at

1 law. Unless restrained and enjoined by this Court, the wrongful acts of Summit will continue
 2 to cause serious irreparable injury and damage to Philips.

3 **SIXTH CAUSE OF ACTION**

4 **Unfair Competition in Violation of Washington's**
 5 **Consumer Protection Act - RCW 19.86.020, et seq.**

6 **(All Plaintiffs Against All Defendants)**

7 173. Philips restates and re-alleges all of the allegations of all the paragraphs in
 8 this complaint as though fully set forth herein this Sixth Cause of Action.

9 174. As set forth above, Summit makes false and misleading statements regarding
 10 the quality and nature of Summit's business and services. Specifically, Summit advertises that
 11 its services, relying upon its Adepto hacking tool, are a legal alternative Philips OEM services
 12 that address the market issue that Philips protects its proprietary software and trade secrets with
 13 access controls. Summit warns healthcare providers that other independent service
 14 organization rely on falsely generated keys or codes to perform services by infringing OEM
 15 rights in OEM service tools. Summit further markets that it is able to modify Philips Ultrasound
 16 System software without accessing or touching Philips Ultrasound Software, and that Summit's
 17 Adepto hacking tool only accesses Windows portions of a Philips Ultrasound Software system.
 18 Summit explains that this method of circumventing Philips access controls is legal, and avoids
 19 liability to healthcare providers arising from unlawful services.

20 175. Summit's marketing is false and misleading, because it is untrue; Summit's
 21 techniques are unlawful as described throughout this complaint. Specifically, Summit's
 22 techniques violate at least the DMCA's prohibition on circumventing access controls that
 23 effectively control access to a protected work, because Philips access controls effectively
 24 control access to Philips proprietary optional software, to access to Philips software for
 25 enabling Philips optional software, and access to Microsoft's Windows operating systems
 26 within Philips' Ultrasound Systems.

27 176. Defendants' false and misleading representations of fact in its commercial

1 advertising misrepresent the nature, characteristics, qualities, and origin of Summit's services,
2 and falsely represent that Summit's services are a legal mechanism for circumventing Philips
3 access controls within its medical imaging devices, including Ultrasound Systems.

4 177. Such conduct by Summit is an unfair method of trade in violation of
5 Washington's Consumer Protection Act, RCW 19.86.020.

6 178. Defendants' knowledge that their Adepto hacking tool and reliance on Philips
7 tools for enabling Philips software options all work to circumvent access controls meant to
8 protect Philips copyright-protected works and Philips trade secrets evidences an intent to cause
9 consumer confusion and to defraud the public, and therefore justify imposition by this Court an
10 award including treble damages and reasonable attorney's fees as provided by RCW 19.86.090.

11 179. Upon information and belief, Nguyen personally oversees and approves the
12 use of Summit's false advertising. Specifically, Nguyen has been personally involved in
13 making false statements on behalf of Summit in Summit's marketing of the Adepto hacking
14 tool to Summit's customers as the only legal alternative to relying on Philips, as OEM, for
15 support of Summit's customers' systems.

16 180. Thus, Nguyen is personally and individually liable for the false advertising
17 activities of Summit and Summit's employees which he personally formulates, ratifies, directs,
18 controls, and participates in.

19 181. As a direct and proximate result of Defendants' unfair methods of
20 competition and deceptive acts, Plaintiffs have suffered, and will continue to suffer, substantial
21 damage and irreparable harm constituting injury for which they have no adequate remedy at
22 law. Unless restrained and enjoined by this Court, the wrongful acts of Summit will continue
23 to cause serious irreparable injury and damage to Philips.

24 **JURY DEMAND**

25 Pursuant to Fed.R.Civ. P. 38 and LCR 38, Plaintiffs hereby demand a trial by jury for
26 all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs request that this Court enter judgment in their favor and against Defendant as follows:

1. Judgment be entered that

a. Defendants have committed acts of unfair competition including false designation or origin and false advertising in violation of 15 U.S.C. § 1125(a);

b. Defendants have committed actions of circumventing a technological measure that effectively controls access to Philips' works protected under Title 17 in violation of the DMCA, 17 U.S.C. § 1201(a)(1);

c. Defendants have committed actions of trafficking in a technology, device, product, service, component, or part thereof in violation of DMCA, 17 U.S.C. § 1201(a)(2);

- d. Defendants have falsified and provided or distributed falsified copyright management information in violation of the DMCA, 17 U.S.C. § 1202;
- e. Defendants have committed acts of trade secret misappropriation in

violation of the DTSA, 18 U.S.C. § 1836;

f. Defendants have violated the Washington Uniform Trade Secret Act in violation of RCW 19.108, *et. seq.*:

g. Defendants have engaged in unlawful, unfair and deceptive business practices in violation of Washington's Consumer Protection Act, RCW 19.86.020, *et seq.*

2. Judgment be entered permanently enjoining Defendants and each of their officers, members, employees, owners managers, agents, attorneys, successors, servants, subsidiaries, related entities, licensees, and assigns, and all persons acting in concert with any of the foregoing, from:

a. selling, offering for sale, advertising, or promoting any goods or services

in violation of the Lanham Act § 1125 or RCW 19.86.020;

- b. circumventing any Philips access control;
- c. using, possessing, or distributing any Philips proprietary material or trade secrets; and
- d. modifying any Philips copyright management information.

3. Order an accounting of all Philips trade secrets or proprietary material in

Defendants' possession and that all such trade secret or proprietary material be returned to Philips;

4. Defendants be held liable and ordered to account for and pay to Plaintiffs,

- a. treble actual damages or Defendants' profits pursuant to 15 U.S.C. § 1117(a) based on Defendants' willful false and misleading advertising;
- b. all gains, benefits, and advantages derived from Defendants' wrongful use, misappropriation, and infringement of Plaintiffs' trade secrets;
- c. all losses and damages, including lost profits and costs for corrective advertising, suffered by the Philips as a result of Defendants' unfair competitive practices;
- d. award monetary damages to Philips, including but not limited to compensatory damages and statutory, enhanced, treble and punitive damages, to the extent recoverable by any applicable law;
- e. Philips' reasonable attorneys' fees and costs pursuant to 15 U.S.C. § 1117(a), RCW 19.86.090, RCW 19.108.040;
- f. treble damages pursuant to RCW 19.86.090;
- g. exemplary damages pursuant to RCW 19.108.030;
- h. exemplary and punitive damages for Defendants' willful, wanton and reckless conduct; and
- i. Judgment granting Plaintiffs damages and such other relief as this Court deems just and proper.

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